

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 92.21, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 32, "Child Labor," Iowa Administrative Code.

The proposed amendments implement 2009 Iowa Acts, House File 618, and Iowa Code chapter 92 by establishing rules for child labor civil penalties; adopting new definitions; and setting forth procedures for obtaining work permits, migrant labor permits, certificates of age, and street trades permits.

The principal reasons for adoption of these amendments are to implement legislative intent and help people obtain required permits and certificates of age.

Written data, views, or arguments to be considered in adoption shall be submitted no later than October 14, 2009, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

If requested in accordance with Iowa Code section 17A.4(1)"b" by the close of business on October 13, 2009, a public hearing will be held on October 14, 2009, at 1:30 p.m. in the Stanley Room at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

No variance provision is included in these rules. Variance procedures are set forth in 875—Chapter 1.

These amendments are intended to implement Iowa Code chapter 92 as amended by 2009 Iowa Acts, House File 618.

The following amendments are proposed.

ITEM 1. Adopt the following new rule 875—32.1(92):

875—32.1(92) Definitions.

"Filing date" means the date a document is postmarked by the U.S. Postal Service, if the document is filed by mailing and the U.S. postmark is legible. For a document filed via facsimile transmission, "filing date" means the date the document is transmitted. For any other document, "filing date" means the date the document is received by the labor commissioner.

"Issuing officer" means a person with a statutory obligation to issue work permits, migrant labor permits, street trade permits, and certificates of age. The school superintendent and the designated employees of the department of workforce development are issuing officers.

"Migrant labor permit" means an authorization to work as described in Iowa Code section 92.12.

"Occupation or business operated by the child's parents," as used in Iowa Code section 92.17(4), means a business operated by the child's parent where the parent has control of the day-to-day operation of the business and is on the premises during the hours of the child's employment.

"Part-time," as used in Iowa Code section 92.17(3), means one-half of the maximum hours allowed under Iowa Code chapter 92.

"Part-time, occasional, or volunteer work," as used in Iowa Code section 92.17(1), means work for which compensation is not usually given.

"Serious injury or illness" means an illness or injury requiring medical attention beyond first aid.

"Street trade" means an occupation performed on any street including but not limited to newspaper sales, newspaper delivery, and door-to-door sales.

“*Street trades permit*” means an authorization as described in Iowa Code section 92.2 to perform a street trade.

“*Superintendent*,” in a public school, means the superintendent or the superintendent’s designee. In a private school, “superintendent” means the superintendent, or another person with comparable responsibilities, or that person’s designee.

“*Week*,” as used in Iowa Code section 92.7, means Sunday through Saturday.

“*Working days*,” as used in rule 875—32.12(92), means Mondays through Fridays but shall not include Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

“*Work permit*” means an authorization to work as described in Iowa Code section 92.10.

ITEM 2. Adopt the following **new** rule 875—32.2(92):

875—32.2(92) Permits and certificates of age.

32.2(1) *When permits and certificates of age are required.* A street trades permit is required for a child who is at least 10 years of age, who is less than 16 years of age, and who desires to work in a street trade. A migrant labor permit is required for a child who is at least 12 years of age, who is less than 16 years of age, and who desires to perform migratory labor as defined in Iowa Code section 92.18. A work permit is required for a child who is 14 or 15 years of age and who desires to perform work other than street trades and migratory labor. An employer may require a certificate of age for a child 16 or 17 years of age.

32.2(2) *How permits and certificates of age are issued.* The Iowa Child Labor Form, form number 62-2203, shall be completed for a street trade permit, a certificate of age, a migrant labor permit, or a work permit. The following procedure shall be used for completing the form:

a. After accepting an offer of employment and before beginning work, an applicant shall obtain an appropriate document establishing the applicant’s age and shall personally take the document to the local superintendent or a department of workforce development office. Locations of workforce development offices are available at www.iowaworkforce.org. The document establishing age shall be:

(1) A certified copy of the applicant’s birth certificate, if it is available.

(2) If a certified copy of the applicant’s birth certificate is not available, the applicant’s passport or a certified copy of the applicant’s baptismal record.

(3) If none of the documents listed in (1) and (2) are available, one of the following documents shall be used:

1. A visa issued by the U.S. government.

2. A resident alien card issued by the U.S. government.

3. A physician’s affidavit certifying the applicant’s age. A sample physician’s affidavit is available at <http://www.iowaworkforce.org/labor/childlabor.htm>.

b. The issuing officer shall provide the applicant a copy of the Iowa Child Labor Form along with instructions for completing the form.

c. The applicant shall follow all necessary steps to complete the applicable portions of the form and return the form to the issuing officer.

d. The issuing officer shall review the information on the form and, if appropriate, shall sign and date the form. The issuing officer shall make copies of the completed document and distribute them according to the labor commissioner’s instructions.

ITEM 3. Rescind rule 875—32.11(92) and adopt the following **new** rule in lieu thereof:

875—32.11(92) Civil penalty calculation. The labor commissioner shall follow the provisions of this rule when calculating civil penalties for violations of this chapter or Iowa Code chapter 92 as amended by 2009 Iowa Acts, House File 618. The labor commissioner may refer a violation to the appropriate authority for criminal prosecution in addition to assessing a civil penalty.

32.11(1) *Counting the number of violations.* Each item of inaccurate information on each permit shall be a separate violation. Each day that each child works at a time not listed on the permit, works on

a day not listed on the permit, works at an occupation not listed on the permit, works without a permit, works on a prohibited day, works at a prohibited time, or works in a prohibited occupation shall be a separate violation for the purpose of penalty calculation.

32.11(2) *Determining whether a violation is a repeat violation.* The higher penalty amounts outlined in subrules 32.11(3) through 32.11(5) for repeat instances may be assessed by the labor commissioner if citations regarding the earlier instance or instances are final action and occurred less than five years before.

32.11(3) *Permit violations.*

a. Inaccurate information on a street trades permit, migrant labor permit, or work permit. Insignificant misspellings and typographical errors shall not be considered inaccurate information. A repeated instance of inaccurate information may result in a higher penalty even if the earlier instance or instances of inaccurate information involved a different fact. If a child is killed while working and the child's permit lists the wrong age for the child, the civil penalty shall be \$10,000 for each instance. Otherwise, the civil penalties for inaccurate information on the applicable permit are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	Warning letter
Second	\$100 civil penalty
Third	\$200 civil penalty
Fourth	\$500 civil penalty
Fifth	\$1,000 civil penalty
Sixth	\$2,500 civil penalty
Seventh	\$5,000 civil penalty
Eighth	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

b. Working outside a permit. When a child is working outside the days, times or occupations listed on the street trades permit, migrant labor permit, or work permit, and the day, time or occupation the child is working are also prohibited, the labor commissioner may assess civil penalties under this subrule and subrule 32.11(4) or subrule 32.11(5) as applicable. If a child is killed while working outside the days, times or occupations listed on the applicable permit, the civil penalty shall be \$10,000 for each instance. Otherwise, the civil penalties for working outside the days, times or occupations listed on the applicable permit are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	\$100 civil penalty
Second	\$250 civil penalty
Third	\$500 civil penalty
Fourth	\$1,000 civil penalty
Fifth	\$2,500 civil penalty
Sixth	\$5,000 civil penalty
Seventh	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

c. Working without a permit. When a child is working without a required permit, and the day, time or occupation the child is working is also prohibited, the labor commissioner may assess civil penalties under this subrule and subrule 32.11(4) or subrule 32.11(5) as applicable. If a child is killed while working without a required permit, the civil penalty shall be \$10,000 for each instance. Otherwise, the civil penalties for working without a required permit are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	\$250 civil penalty
Second	\$500 civil penalty
Third	\$1,000 civil penalty
Fourth	\$2,500 civil penalty
Fifth	\$5,000 civil penalty
Sixth	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

32.11(4) Time violations. If a child is killed while working on a prohibited day or at a prohibited time, the civil penalty shall be \$10,000 for each instance. Otherwise, the penalties set forth in this subrule shall be applied.

a. The civil penalties for working less than 15 minutes before or after an allowed time are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	Warning letter
Second	\$100 civil penalty
Third	\$200 civil penalty
Fourth	\$500 civil penalty
Fifth	\$1,000 civil penalty
Sixth	\$2,500 civil penalty
Seventh	\$5,000 civil penalty
Eighth	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

b. The civil penalties for working on a prohibited day or for working 15 minutes or more before or after an allowed time are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	\$100 civil penalty
Second	\$250 civil penalty
Third	\$500 civil penalty
Fourth	\$1,000 civil penalty
Fifth	\$2,500 civil penalty
Sixth	\$5,000 civil penalty
Seventh	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

32.11(5) Occupation violations.

a. If no serious illness or injury results from the work, the civil penalties for allowing or permitting a child to perform prohibited work are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	\$500 civil penalty
Second	\$1,500 civil penalty
Third	\$2,500 civil penalty

<u>Instance</u>	<u>Penalty</u>
Fourth	\$5,000 civil penalty
Fifth	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

b. If a nonfatal but serious illness or injury results from the work, the civil penalties for allowing or permitting a child to perform prohibited work are as set forth in the following schedule:

<u>Instance</u>	<u>Penalty</u>
First	\$2,500 civil penalty
Second	\$5,000 civil penalty
Each additional instance	\$10,000 civil penalty

c. If a fatality results from the work, the civil penalty for allowing or permitting a child to perform prohibited work is \$10,000 for each instance.

32.11(6) *Penalty reduction factors.* Except for violations related to the death of a child while working, the labor commissioner shall reduce the penalty calculated pursuant to subrules 32.11(1) through 32.11(5) by the appropriate penalty reduction percentages set forth in this subrule. However, if the labor commissioner requests information relevant to the penalty assessment and the employer does not provide responsive information, the labor commissioner shall not reduce the penalty.

a. *Penalty reduction for size of business.* The labor commissioner shall reduce the penalty amount by 25 percent if the employer has 25 or fewer employees. The labor commissioner shall reduce the penalty amount by 15 percent if the employer has 26 to 100 employees. The labor commissioner shall reduce the penalty amount by 5 percent if the employer has 101 to 250 employees.

b. *Penalty reduction for good faith.* The labor commissioner may reduce a penalty by 15 percent based upon evidence that the employer made a good faith attempt to comply with the requirements. If at any time the labor commissioner warned an employer in writing about a prohibited practice and a civil penalty is being assessed against the same employer for repeating the practice, the labor commissioner shall not reduce the penalty based on good faith.

c. *Penalty reduction for history.* The labor commissioner shall reduce a penalty by 10 percent if the labor commissioner has not assessed a civil penalty under this chapter within the past five years. If the labor commissioner has assessed a civil penalty under this chapter in the past five years but the civil penalty has not reached judicial or administrative finality, the civil penalty shall be reduced by 10 percent.

ITEM 4. Adopt the following **new** rule 875—32.12(92):

875—32.12(92) Civil penalty procedures.

32.12(1) *Notice of civil penalty.* The commissioner shall serve a notice of proposed civil penalty by certified mail or in a manner consistent with service of original notice under the Iowa Rules of Civil Procedure. The notice shall include the following:

- a. A statement that the notice proposes a civil penalty assessment for violation of child labor laws.
- b. Descriptions of the alleged violations including the provisions allegedly violated, the number of violations, and the proposed penalties.
- c. A statement that the employer has the right to request a hearing by filing a notice of contest with the labor commissioner within 15 working days from the receipt of the notice of proposed civil penalty and that if a notice of contest is not timely filed, the proposed civil penalty will become final agency action.
- d. A reference to the applicable procedural provisions.

32.12(2) *Notice of contest.* The civil penalty proposed by the labor commissioner shall become final agency action if the employer does not timely file a notice of contest. The filing date for a timely notice of contest shall be within 15 working days of the date the notice of proposed civil penalty was received

by the employer. The notice of contest shall include the name, address, and telephone number of the employer's representative. If a notice of contest is filed by fax, the original shall be mailed to the labor commissioner.

32.12(3) *Contested case procedures.* Contested case procedures are set forth in 875—Chapter 1 and Iowa Code chapter 17A.